

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 396 of 1993

in

SPECIAL CIVIL APPLICATION No 4722 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

P R GANDHI

Appearance:

MR RC KODEKAR AGP for Appellants
Respondent No. 1 - served.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 15/03/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. By means of filing this appeal under clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated March 15, 16 & 18, 1982 rendered by the learned Single Judge in Special Civil Application No. 4722 of 1981 whereby the order dated September 15, 1981 passed by the Chairman of District Rural Development Agency, Bulsar reverting the respondent to the post of Clerk-cum-Typist is partially quashed and a declaration is made that the order of reversion made in case of the respondent would continue to be operative but the post to which she would stand reverted thereunder is the post of Steno-Typist Grade III in the pay scale of Rs.350-500 on and with effect from the date on which the said order became operative with all consequential benefits.

2. The Chairman of Bulsar District Marginal Farmers and Agricultural Labourers Development Agency, Bulsar had appointed the respondent as Clerk-cum-Typist in the pay scale of Rs.130-240 vide order dated April 17, 1972. On July 25, 1980, a meeting of the Governing Body of the Small Farmers Development Agency, Bulsar was held wherein the request of the Project Officer to take necessary action in the direction of filling in the post of Stenographer-cum-Typist was accepted and the Chairman was authorised to take necessary action in the direction of filling in the said post. Pursuant to the aforesaid decision, the Chairman issued an order dated February 18, 1981 promoting the respondent to the post of Stenographer-cum-Typist in the pay scale of Rs.400-800 with effect from February 16, 1981. The Governing Body of the District Rural Development Agency, Bulsar held its meeting on September 15, 1981 and passed a resolution to the effect that appointment on different posts was required to be made by taking suitable officials on deputation from Panchayat or Government cadres and that, therefore, the Chairman should make appropriate orders determining the staff pattern of the Agency. By the said resolution, the Chairman was also authorised to make necessary orders in that direction to cancel promotions granted to the directly recruited employees of the Agency to higher posts and to revert them to their original posts. The Chairman of the Agency, therefore, reverted the respondent to the post of Clerk-cum-Typist in the pay scale of Rs.260-400 by order dated September 15, 1981 which was challenged by the respondent in Special Civil Application No. 4722 of 1981.

3. The stand taken by the appellants was that according to the established policies the post in question was required to be filled in only by deputation and not by promotion and, therefore, the respondent was not entitled to any reliefs. It was also pleaded on behalf of the appellants that appointment of the respondent by promotion on the post of Stenographer-cum-Typist was made in contravention of the directions contained in the Government communication dated October 19, 1977 and, therefore, the petition should be dismissed.

4. The learned Single Judge held that the appointment of the respondent was made before the issuance of Government Resolution dated April 22, 1981 and, therefore, she could not have been reverted relying upon the said resolution. The learned Single Judge deduced that the said resolution did not create bar against promotion of an employee of the Agency holding a post in a lower cadre to a post in a higher cadre but the reversion was ordered on account of the fact that post of Stenographer-cum-Typist had been abolished under the new staff pattern which the Chairman had determined by order dated September 15, 1981 and, therefore, the reversion of the respondent was not totally bad in law. It transpired during the course of the hearing of the petition that between the post of Stenographer-cum-Typist in the pay scale of Rs.475-800 held by the respondent and the post of Clerk-cum-Typist in the pay scale of Rs.260-400 to which the respondent was reverted, there was an intermediate post of Steno-Typist Grade III in the pay scale of Rs.350-500. The learned Single Judge, therefore, concluded that the respondent could not have been reverted straightaway to the post of Clerk-cum-Typist upon abolition of the post of Stenographer-cum-Typist and reversion, if any, could have been ordered to the intermediate post of Steno-Typist Grade III. In view of the above referred to conclusions, the learned Single Judge has partly accepted the petition by the impugned judgment giving rise to the present appeal.

5. Mr. R.C. Kodekar, learned A.G.P. submitted that after having held that the reversion order was legal, the petition filed by the respondent could not have been accepted nor the appellants could have been directed to treat the respondent as having been reverted to the post of Steno-Typist Grade III in the pay scale of Rs.350-500 with all consequential benefits and, therefore, the appeal should be accepted. What was claimed by the learned counsel for the appellants was

that the respondent did not possess requisite qualification for being appointed to the post of Steno-Typist Grade III and, therefore, direction to the appellants to revert respondent to the post of Steno-Typist Grade III in the pay scale of Rs.350-500 should not have been given by the learned Single Judge. According to the learned counsel for the appellants, the impugned judgment being contrary to the staff pattern determined by the Chairman should be set aside by allowing the appeal.

6. Though the respondent is served she has neither appeared in person nor through an advocate.

7. We have heard the learned counsel for the appellants and taken into consideration the documents which form part of the record of the petition.

8. The fact that between the post of Stenographer-cum-Typist in the pay scale of Rs.475-800 which was held by the respondent and the post of Clerk-cum-Typist in the pay scale of Rs.260-400 to which the respondent was reverted there is an intermediate post viz., Steno-Typist Grade III in the pay scale of RS.350-500 is not in dispute. It is an admitted position that the respondent was found fit to be promoted to the post of Stenographer-cum-Typist and, therefore, she could not have been reverted straightaway to the post of Clerk-cum-Typist upon abolition of the post of Stenographer-cum-Typist. The reversion, if any, should have been to the intermediate post of Steno-Typist Grade III. The contention that the respondent did not possess the requisite qualification for being appointed to the post of Steno-Typist Grade III has no substance. It is relevant to notice that the Agency itself had promoted the respondent to the post of Stenographer-cum-Typist after recording the fact that she was duly qualified to be appointed to the said post. It is not shown from the record of the case that the respondent had not satisfactorily performed her duties as Stenographer-cum-Typist. Moreover, no standards for appointment to the said post which are required to be conformed are laid down. Even today, no qualifications are shown to have been laid down for the post of Steno-Typist Grade III. Under the circumstances, the submission that the respondent does not possess requisite qualification for being appointed to the post of Steno-Typist Grade III cannot be accepted and is hereby rejected.

9. It is true that staff pattern was determined by

the Chairman of the Agency but it is not shown that the post of Steno-Typist Grade III is abolished. As observed earlier, the respondent could have been reasonably and legitimately ordered to be reverted to the next immediate lower post viz., Steno-Typist Grade III and, therefore, the decision of the learned Single Judge partially quashing the reversion order cannot be said to be erroneous at all.

10. Having regard to the facts of the case, we are of the opinion that the direction given by the learned Single Judge to the appellants to treat the respondent as having been reverted to the post of Steno-Typist Grade III in the pay scale of Rs.350-500 on and with effect from September 15, 1981 and to accord consequential benefits is just and proper and no ground is made out by the learned counsel for the appellants to interfere with the same in the present appeal. The result is that the appeal cannot succeed and will have to be dismissed.

11. For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs.

(J.M. Panchal, J.)

15.3.2000. (A.M. Kapadia, J.)

(karan)